

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**GABRIEL LIZANA**

**PLAINTIFF**

**v.**

**CIVIL ACTION NO. 3:04CV693-B-N**

**LEON SHIELDS, et al.**

**DEFENDANTS**

**ANSWER**

**COME NOW**, Defendants, Jerry Kern and Curtis Roach, and file this their answer and defenses to the complaint as filed herein against them by Plaintiff as follows:

**I & II. PARTIES**

Admitted.

**III. STATEMENT OF CLAIM**

Defendants deny each and every allegation set forth under paragraph III. of the complaint entitled "Statement of Claim", including each sub-paragraph thereunder and any and all attachments, exhibits or addenda thereto.

**IV. RELIEF**

Defendants deny each and every allegation set forth under paragraph IV. of the complaint entitled "Relief", including any and all sub-paragraphs thereunder and each and every attachment, exhibit or addenda thereto.

**WHEREFORE**, Defendants having fully answered or otherwise responding to the allegations set forth in Plaintiff's complaint as exhibited herein against them, deny that Plaintiff is entitled to relief in any form or amount whatsoever against them or any one of them. Defendants now move the court for an order dismissing the complaint with prejudice at Plaintiff's costs.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Plaintiff's complaint fails to state a claim against the Defendants upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The court lacks jurisdiction over the parties in this cause.

**THIRD AFFIRMATIVE DEFENSE**

The Defendants are entitled to and hereby affirmatively plead their Eleventh Amendment immunity to suit and liability in this cause, including relief from discovery procedures.

**FOURTH AFFIRMATIVE DEFENSE**

The Defendants are entitled to and hereby affirmatively plead their federal law qualified immunity to suit and liability in this cause, including relief from discovery procedures.

**FIFTH AFFIRMATIVE DEFENSE**

The Defendants are entitled to and hereby affirmatively plead their state law qualified immunity defenses to suit and liability in this cause, including relief from discovery procedures.

**SIXTH AFFIRMATIVE DEFENSE**

The Defendants are entitled to and hereby affirmatively plead their sovereign immunity defenses to suit and liability in this cause pursuant to and inclusive of the provisions of § 11-46-1, et, seq., Miss. Code of 1972, as annotated and amended.

**SEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff, by and through his complaint, and/or previous complaints, if applicable, is subject to the provisions of 18 U.S.C. § 3626, including the restrictions, limitations and penalties

therein.

**EIGHTH AFFIRMATIVE DEFENSE**

The Plaintiff by and through his complaint, and previous complaints, if applicable, is subject to the provisions of 28 U.S.C. § 1915.

**NINTH AFFIRMATIVE DEFENSE**

The Plaintiff, by and through his complaint, and previous complaints, if applicable, is subject to the provisions of § 47-5-138 Miss. Code of 1972 as annotated and amended.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint is subject to the exhaustion of remedies requirement of 42 U.S.C. § 1997e, and this action is barred for failure to comply therewith.

Respectfully submitted,

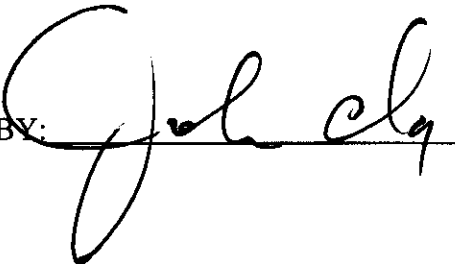
JERRY KERN and CURTIS ROACH

DEFENDANTS

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

LEONARD VINCENT  
MDOC SENIOR STAFF ATTORNEY  
MS BAR NO.: 6615

JOHN L. CLAY  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MS BAR NO.: 6286

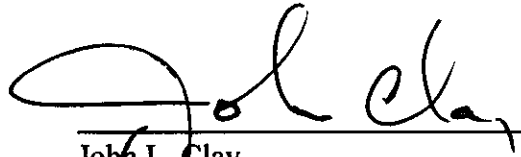
BY: 

**CERTIFICATE OF SERVICE**

I, John L. Clay, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing **Answer** in the above-styled and numbered cause to the following:

Gabriel Lizana, #L7444  
CMCF, 3B-1, A-Zone, Bed #59  
P.O. Box 88550  
Pearl, MS 39288-8550

This, the 8 day of February, 2005.



John L. Clay  
Special Assistant Attorney General

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